



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
Robert James Dadario,
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Plaintiff,
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-against-
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Commissioner of Social Security,
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Defendant.
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**ORDER
IN SOCIAL SECURITY CASE**

20-CV-10758 (KHP)

KATHARINE H. PARKER, United States Magistrate Judge.

The Court is in receipt of a letter from the claimant's mother. (ECF No. 29.) The Court is very sorry to hear about the death of Mr. Dadario. Given the current situation, the Court may order substitution of the proper parties pursuant to Federal Rule of Civil Procedure 25(a)(1).

Federal Rule of Civil Procedure 25(a)(1) provides:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party . . . Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Fed. R. Civ. P. 25(a)(1). The rule establishes a time limit starting from the time "information of the death is provided by means of a suggestion of death upon the record" – i.e. today by letter provided by Mr. Dadario's mother that included Plaintiff's death certificate. Fed. R. Civ. P. 25.

A "proper party" for substitution under Rule 25(a)(1) is "either (1) a successor of the deceased party – a distributee of an estate if the estate of the deceased has been distributed at the time the motion for substitution has been made, or (2) a representative of the deceased party – a

personal lawfully designated by state authority to represent the deceased's estate." *Nachshen v. BPP ST Owner LLC*, 2021 WL 5042855, at *1 (S.D.N.Y. Oct. 29, 2021).

The Court understands that Mr. Dadario's mother seeks discontinuance. However, to comply with Rule 25, time must be allowed for a motion for substitution before dismissing the action. If a motion for substitution is not made by **May 30, 2022**, this action by the decedent will be dismissed by operation of Rule 25.

Under Rule 25(a), a suggestion of death must be served on nonparties "as provided in Rule 4." **Accordingly, the Court requests that the Clerk of Court send this order to Plaintiff's parents, Victor and Susan Dadario, at 416 Minnieford Avenue, Bronx, New York, NY 10464-1316.**

SO ORDERED.

Dated: March 1, 2022
New York, New York



KATHARINE H. PARKER
United States Magistrate Judge